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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/071,037	02/08/2002	Brent E. Logan	4527-103.1 US	3613

7590 07/16/2002

Mathews, Collins, Shepherd & McKay, Esq.  
Suite 306  
100 Thanet Circle  
Princeton, NJ 08540

EXAMINER

HARRIS, CHANDA L

ART UNIT

PAPER NUMBER

3714

DATE MAILED: 07/16/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/071,037	LOGAN, BRENT E.
	Examiner	Art Unit
	Chanda L. Harris	3714

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on correspondence filed on 2/8/02.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 12-15, 17-20, 32-40 and 43 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 12-15, 17-20, 32-40 and 43 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____	6) <input type="checkbox"/> Other: _____

## DETAILED ACTION

### ***Status of Claims***

In response to Preliminary Amendment filed on 2/8/02, Claims 33,36,37 and 42 have been amended. Claims 12-15, 17-20, 32-40 and 43 are pending.

### ***Claim Objections***

Applicant is advised that should claim 36 be found allowable, claim 43 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

### ***Double Patenting***

A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

Claim 42 is provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 42 of copending Application No. 09/421,659. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**Claims 12-15, 17-20, 32-40, and 43 are rejected under 35 U.S.C. 102(b) as being anticipated by John et al. (US 3,799,146).**

1. [Claims 12, 17-18, 32-33, 36-38, 43]: Regarding Claims 12, 17-18, 32-33, 36-38 and 43, John discloses a method and means for determining a pattern of sonic variations, said pattern comprising a plurality of sequence of tones. See Col.1: 40-43. John discloses transmitting each of said sequences of tones in soundwave form to an infant (e.g. premature baby, postnatal human) and others, during a predetermined period. See Abstract. John also discloses wherein a tempo at which each subsequent said sequence of tones is repeated is selected to be increased at a predetermined time during the predetermined period. See Col.3: 19-20 and Col.7: 50-63.

2. [Claims 13, 18, 33]: Regarding Claims 13, 18 and 33, John discloses in Col.3: 18-19 and Col.9: 12-20 wherein the tones in the pattern of sonic variations are a baseline tone or a tonal variation from the baseline tone in which subsequent sequences increase or decrease in tempo. With regards to Claim 36 and 43, John also discloses a means for positioning a transmission means proximate to a forehead of said human (e.g. earphones) and transmitting said sequence of tones aurally. See Col.1: 51-54.
3. [Claims 14, 19, 34 and 39]: Regarding Claims 14, 19, 34 and 39, John discloses storing a pattern of sonic variations in an electronic integrated circuit. See Col.1: 47-50.
4. [Claims 15, 20, 35, 40]: Regarding Claims 15, 20, 35 and 40, John discloses transmitting a stored plurality of patterns from an electronic integrated circuit to a premature baby with a sonic transducer. See Col.1: 50-53.

***Citation of Pertinent Prior Art***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- Carter et al. (US Re. 36,348)  
-method and apparatus for changing brain wave frequency
- Clark et al. (US 5,928,160)  
-home hearing test and method
- Besserman (US 4,284,847)  
-audiometric testing
- Meyer (US 3,970,785)

- tone count audiometric computer
- Feezor (US 4,038,496)
  - diagnostic audiometer
- Keith et al. (US 4,862,505)
  - audiometer
- Bethea, III et al. (US 4,201,225)
  - hearing test
- Jaillet (US 6,299,632)
  - changing brain activity using light and sound
- Meissner (U.S. Patent No. 5,135,468)
  - varying the brain state of a person by an audio signal

Shakas et al. (U.S. Patent No. 4,941,453)

- infant transitional sensory system
- Cuervo (U.S. Patent No. 4,785,797)
  - therapeutic and sound treatment of infants
- Samson (U.S. Patent No. 4,819,616)
  - baby calmer
- Peterson et al. (U.S. Patent No. 5,957,699)
  - teaching system

***Conclusion***

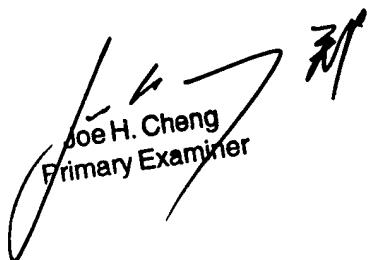
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chanda L. Harris whose telephone number is 703-308-8358. The examiner can normally be reached on M-F 6:30am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Valencia Martin-Wallace can be reached on 703-308-4119. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.

Chanda L. Harris  
Examiner  
Art Unit 3714

  
ch.  
July 12, 2002

  
Joe H. Cheng  
Primary Examiner